80-325

Supreme Court, U. S.
FILED
AUG 28 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. _____

JEAN T. RADOMSKI, also known as Jean T. Knight,

Petitioner,

vs.

WILLIAM B. KNIGHT, as Special Guardian of William Austin Knight, and William Austin Knight, his ward,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Maine guardianship statutes governing incompetent persons significantly and directly interfere with a mentally incompetent adult ward's fundamental right to marry, in violation of due process, equal protection and the right of privacy, by requiring the ward to obtain the guardian's consent or court modification of the terms of guardianship before marrying.

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	1
Statutes Involved	2
Statement of the Case	4
Reasons for Granting the Writ:	
The decision below construes Maine's guardianship legislation in a manner inconsistent with this Court's decision in Zablocki v. Redhail by creating a direct and substantial burden on an incompetent adult ward's right to marry	
Conclusion	23

APPENDIX

Appendix A - Maine Supreme Judicial Court Opinion	A-1
Appendix B - Maine Superior Court Opinion	A-26

TABLE OF AUTHORITIES

Cases Cited:	Page
Bellotti v. Baird 443 U.S. 662, reh. den. 444 U.S. 887 (1979)	16,17,22
Califano v. Jobst, 434 U.S. 47 (1978).	14
Griswold v. Connecticut 381 U.S. 479 (1965)	11
Loving v. Virginia, 388 U.S. 1 (1967)	11
Mapes v. United States, 576 F.2d 896 (Ct. Cl.), cert. denied, 439 U.S. 1046 (1978)	14
O'Connor v. Donaldson, 419 U.S. 894 (1975)	11
Southwestern Community Action Council v. Community Servs. Administration, 462 F. Supp. 289 (S.D. W. Va. 1978).	15
Zablocki v. Redhail, 434 U.S. 374 (1978)	passim.

TABLE OF AUTHORITIES

Constitutional Provisions and Statutes Cited:	Page
U. S. Const. Amend. IX	2
U. S. Const. Amend. XIV, Section 1	2
28 U.S.C. § 1257(3).	1
28 U.S.C. § 2403(6).	1
18 M.R.S.A. § 3601	2
18 M.R.S.A. § 3603	3,5,9
18 M.R.S.A. § 3605	3
18 M.R.S.A. § 3607	4,5,9
Authorities Cited:	
Annot., Mental Capacity to Marry, 82 A.L.R. 2d 1040.	13
Grose, A Constitutional Analysis of Pennsylvania's Restrictions Upon Marriage, 83 Dickinson L. R. 71 (1978)	22
Karst, The Freedom of Intimate Association 89 Yale L. J. 624 (1980) . .	16, 20
Note, Developments in the Family - The Constitution and the Family, 93 Harvard L. R. 1156 (1980)	14,15,21

OPINIONS BELOW

The opinion of the Supreme Judicial Court of Maine is published at 414 A.2d 1211 (1980) and is attached as Appendix A. The opinion of the Hancock County, Maine, Superior Court is not published and is attached as Appendix B.

JURISDICTION

Petitioner Jean T. Radomski respectfully petitions this Court to issue a writ of certiorari to review the judgment and opinion of the Supreme Judicial Court of Maine entered in this proceeding on May 30, 1980. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1257(3) and 28 U.S.C. §2403(b).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment IX:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

United States Constitution, Amendment XIV, Section 1:

> ...;nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * *

18 Maine Revised Statutes Annotated §3601. Appointment.

Statutes Involved

> The judge of probate may appoint guardians to the following persons resident in this county, or resident out of the State, and having estate in his county, although over 18 years of age, on written

application of any of their friends, relatives or creditors or of the municipal officers or overseers of the poor of the town where they reside;...

1. Incompetent. All persons, including those mentally ill or of unsound mind and married women who, by reason of infirmity or mental incapacity, are incompetent to manage their own estates or to protect their rights;...

§3603. Contracts made after notice and filing void.

...If a guardian is appointed thereupon, all contracts, except for necessaries, and all gifts, sales or transfers of real or personal estate made by such person after said filing and before termination of the guardianship are void...

§3605. Authority and duties.

Such guardians shall have the custody of the persons of their wards,

> if resident in the State, except so far as the court of probate may from time to time otherwise order...

§3607. Disability of adults under guardianship;...

> When a person over 18 years of age is under guardianship, he is incapable of disposing of his property otherwise than by his last will or of making any contract, notwithstanding the death, resignation or removal of the guardian...

STATEMENT OF THE CASE

Petitioner Jean T. Radomski and Respondent William Austin Knight (known as Buzz Knight) were married in the State of Maine on March 28, 1978. Shortly thereafter, Respondent William B. Knight, father and special guardian of Buzz Knight, brought an action to annul

the marriage on the grounds that Buzz lacked capacity to marry due to mental incompetency and due to the statutory disability of a mental incompetent under guardianship to contract under 18 Maine Revised Statutes Annotated §§ 3603, 3607. The Superior Court of Maine, after trial, denied the requested annulment and dismissed the complaint. The Supreme Judicial Court of Maine reversed and remanded for entry of judgment annulling the marriage.

Buzz Knight, a decorated Vietnam war veteran, suffered extensive brain damage when struck by an automobile in 1972 and was hospitalized at the Togus Veterans Administration Hospital in Maine the next year. Petitioner is a clinical psychologist who began treating

Buzz Knight in 1977 at Togus. A romantic attachment developed between Petitioner and Respondent Buzz Knight and on March 28, 1978, they were married. Earlier that same day Respondent William B. Knight was appointed permanent guardian of Buzz Knight.

The trial court found that Buzz Knight "had sufficient mental capacity to understand the nature of his marriage contract and the duties and responsibilities thereby created." Appendix B, at A-40. The trial court further rejected Respondents' contention that the Maine guardianship statutes automatically disable a mentally incompetent ward from contracting marriage. Appendix B, at A-32.

In her motion to dismiss the

complaint in the trial court, at trial, during appeal and at oral argument on Respondents' appeal, Petitioner contended that to construe the guardianship provisions to disable a mentally incompetent ward from contracting marriage, without prior guardian or court approval, would violate the ward's federal constitutional rights to marry and of privacy.

The Supreme Judicial Court of Maine reversed, holding that regardless of the mental capacity and understanding of the ward, the statutory contractual disability of an adjudicated incompetent under guardianship includes contracts of marriage due, in part, to their effect on a ward's property interests. Appendix A, A-20, 414 A.2d at 1215. The court also concluded:

> Defendant's proper procedure, if she could not obtain the guardian's consent, would have been to seek relief from the Hancock County probate court by filing a motion stating grounds for modification of the guardianship order to permit her marriage with Buzz. In no other way can the integrity of the legislative arrangements for guardianship established by 18 M.R.S.A. ch. 501, subch. III, be maintained.

Appendix A, A-24, 414 A.2d at 1216.

REASONS FOR GRANTING THE WRIT

> The decision below construes Maine's guardianship legislation in a manner inconsistent with this Court's decision in Zablocki v. Redhail, by creating a direct and substantial burden on an incompetent ward's right to marry.

The opinion below holds that Petitioner's marriage to Respondent Buzz Knight was void ab initio since Buzz Knight, an adjudged mentally incompetent ward under a statutory contractual

disability, 18 M.R.S.A. §§ 3603, 3607,[1] had married without the consent of his guardian or without obtaining court modification of the terms of guardianship. Appendix A, A-22,414 A.2d 1211. Prior to this time, the Maine statutes had not been construed to include the contractual disability or the requirement of a guardian's consent before a mentally incompetent ward could marry. The court's reasoning, in part, was as follows:

> Because the marriage of a ward can have great impact on matters for which the guardian of his person is responsible under our statutes, it would be inconsistent with the protective purposes of the relevant Maine legislation to permit an incompetent ward to enter effectively a contract of marriage that is not approved

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[1]These provisions are set forth, in pertinent part, in Constitutional Provisions and Statutes Involved, ante.

> by the duly appointed guardian of his person .... The role of the guardian of the person of an incompetent person is not limited in Maine to protection of his property, nor is the marriage of an incompetent ward without effect on his property interests. In Maine, in the absence of effective agreement to the contrary, marriage has obvious effects on a person's property interests. The fact that the controlling statutes manifest, among other purposes, the purpose of protecting the property of an adjudicated incompetent under guardianship actually tends to support the conclusion that the contractual disability in terms set forth in the guardianship statute does include marriage.

Appendix A, A-20, 414 A.2d at 1215-16.

The Maine guardianship provisions thus interpreted, define a class of Maine residents who may not marry unless they or their intended spouse obtain a guardian's consent or a court order permitting the marriage.

This classification significantly and substantially interferes with the fundamental right to marry in violation of equal protection, due process and the right of privacy. Zablocki v. Redhail, 434 U.S. 374 (1978); Loving v. Virginia, 388 U.S. 1 (1967); Griswold v. Connecticut, 381 U.S. 479 (1965). Just as the right to marry may not be denied to persons on account of their race, Loving v. Virginia, supra, the mentally disabled, who are possessed of constitutional rights, O'Connor v. Donaldson, 419 U.S. 894 (1975), are also entitled to this basic civil right.

> Although Loving arose in the context of racial discrimination, prior and subsequent decisions of this Court confirm that the right to marry is of fundamental importance for all individuals.

Zablocki v. Redhail, supra, at 384. (emphasis added)

The Maine guardianship provisions constitute a direct interference with the right to marry. The opinion below establishes that had Respondent Buzz Knight not been under guardianship at the time of the marriage, his mental disability alone would not have been a bar to marrying. Appendix A, A-17, 414 A.2d at 1215. Instead, his mental capacity to understand the nature and consequences of marriage would have been the governing criteria to entering that state. Thus, the very fact of guardianship imposes the additional burdens of obtaining consent or a court order upon a mentally disabled person before he may marry, in contrast to marriages of non-ward mentally disabled persons. Marriages of non-ward mentally disabled persons are now merely voidable under this opinion. Id.;

Appendix B, A-32-36, slip op. of Superior Court, see Annot. 82 A.L.R. 2d 1040, 1042. Without the guardian's consent, or a court order, the ward's marriage is void. These provisions operate as a "Direct legal obstacle in the path of [mentally disabled] persons desiring to get married..." Zablocki v. Redhail, supra, at 387 n. 12. The guardianship provisions chill the exercise of this fundamental right by mentally disabled wards simply by their having to seek the consent of a third party or obtain a court order.

> Many others, able in theory to satisfy the statute's requirements, will be sufficiently burdened by having to do so that they will in effect be coerced into foregoing their right to marry.

Id. Also, the necessity of seeking a

guardian's consent or judicial approval will inevitably cause delay which is but another manifestation of the directness of this burden. The requirement of seeking consent is inconsistent "with the concept of a free society to let the individual determine whether he can meet the burdens of marriage...." Note, Developments in the Family - The Constitution and the Family, 93 Harvard L. R. 1156, 1255 (1980). The interference in the instant case is direct as it "makes the State an actual participant in the decision to marry." Id. Compare Califano v. Jobst, 434 U.S. 47 (1978) (upholding reduction of social security benefits of certain class of persons upon marriage); Mapes v. United States, 576 F.2d 896 (Ct. Cl.), cert. denied, 439 U.S. 1046 (1978) (upholding different tax rates

for single and married taxpayers); Southwestern Community Action Council v. Community Servs. Administration, 462 F. Supp. 289 (S.D. W. Va. 1978) (regulation prohibiting employment of a person by an agency in a job over which a member of that person's immediate family had supervisory control held not a direct obstacle to marriage).

The Maine guardianship provisions also constitute a substantial interference with a mentally disabled ward's right to marry.

> The substantiality of a burden hinges on how much reluctance or difficulty a person would have in meeting the statutory burden.

Note, Developments in the Family, supra, at 1254. The opinion below vests with the guardian and, ultimately, the supervising court, the authority to approve or disapprove a ward's request to marry. Appendix A, A-22,414 A.2d at 1216. Yet the opinion sets forth no standards by which

the guardian or court should review this request. As a result, the ward's fundamental right to marry is subject to an arbitrary decision by a third party or parties. There can be no more significant impediment to a constitutional right than having its exercise depend on the unfettered discretion of a third party.

> All would agree ... that an arbitrary denial by the state of the freedom to marry would violate the Fourteenth Amendment.

Karst, The Freedom of Intimate Association, 89 Yale L. J. 624, 667 (1980). As noted by Mr. Justice Stevens in his concurring opinion in Bellotti v. Baird, 443 U.S. 622, reh. den. 444 U.S. 887 (1979) when a third party, be it an individual or a court, is conferred with an absolute veto over an individual's constitutionally protected right, the decision of the third party will "reflect personal and

societal values and mores..." which are at odds with the concept of personal freedom of choice in constitutionally protected areas. Id., at 166 (Stevens, J., concurring). The very requirement that a ward seek judicial approval of his marriage is a substantial burden on the exercise of that right. Id.; Zablocki v. Redhail, supra, at 387.

Where a state legislative classification significantly interferes with the fundamental right to marry, a critical examination of the State interests supporting the legislation is required. Id., at 383.

> When a statutory classification significantly interferes with the exercise of a fundamental right it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.

Id., at 388. The state interests cited

by the court below are intended to control the marriages of mentally disabled adult wards due to perceived deleterious effects on their estates due to marrying. Appendix A,A-20,414 A.2d at 1215-16. To condition a person's exercise of the fundamental right to marry on the effect of that marriage on his economic status is constitutionally impermissible. Zablocki v. Redhail, supra, at 393-94 (Stewart, J., concurring).

> The economic aspects of a prospective marriage are unquestionably relevant to almost every individual's marriage decision. But I know of no other state statute that denies the individual marriage partners the right to assess the financial consequences of their decision independently. I seriously question whether any limitation on the right to marry may be predicated on economic status....

Id., at 404 n. 4 (Stevens, J., concurring).

The only discernible purpose of the

guardianship provisions in requiring the mentally disabled wards to obtain consent to marry appears to be the preservation of their estates. This beneficent purpose may be a legitimate state interest, "but, since the means selected by the State for achieving [this interest] unnecessarily impinge on the right to marry, the statute cannot be sustained." Id., at 388.

As noted above, not all mentally disabled persons in Maine suffer the burden of seeking this third party consent to marry, but only those under guardianship. The challenged provisions are thus grossly underinclusive with respect to all mentally disabled persons whose marriage has a potential deleterious effect on their estates. Id., at 390. Moreover, the State has no similar provisions respecting the multitudes of nondisabled persons whose impending marriages

threaten enormous changes in their estates. The provisions' classification is also overinclusive insofar as it ignores the possibility that the ward's intended spouse may greatly increase the couple's wealth so that the marriage thereby would not jeopardize the ward's estate. The State has painted with too broad a brush by unnecessarily entwining a ward's fundamental right to marry with a paternalistic concern for his economic well-being. Karst, supra, note 210, at 670. The guardianship provisions do not contemplate the automatic termination of an adult incompetent ward's guardianship upon his marriage. The State's concern for the economic security of the mentally disabled ward may be satisfied after his marriage simply by the continuing overview of his affairs by the guardian. Such continuing overview by the guardian will be "closely tailored"

to effectuate the State's interests without violating the ward's fundamental right to marry. Zablocki v. Redhail, supra, at 388.

Finally, a comparison between the right to marry of the mentally disabled and that of minors is appropriate.

> First, though minors do have constitutional rights, their rights are not coextensive with those of adults, partly because of their inability fully to exercise a mature free choice.
> ...
> Second, even if minors do have a constitutionally protected right to marry, the state is often held to have a valid interest in protecting youth in areas in which it could not 'protect' adults, an interest which suffices to justify legislation impinging on the constitutional rights of minors.

Note, Developments in the Family, supra, at 1258. The restrictions on a minor's right to marry based on age are valid because they are temporary and apply to everyone within the class. Grose,

A Constitutional Analysis of Pennsylvania's Restrictions Upon Marriage, 83 Dickinson L. R. 71, 82 (1978); see, Bellotti v. Baird, supra, at 642. This Court also has noted that the minor's right to marry only with parental consent is constitutional due to the minor's lack of capacity to make an informed and mature decision. Id., at 635-36, n. 13. For these reasons, third parties (usually the parents) are permitted to exercise a veto over a minor's fundamental right to marry. However, this Court struck down a parental veto of a minor's decision to have an abortion due to the grave and permanent consequences to the minor of such a veto. Bellotti v. Baird, supra. The court below has construed the Maine guardianship legislation so that a mentally disabled ward who is competent to make the decision to marry can be

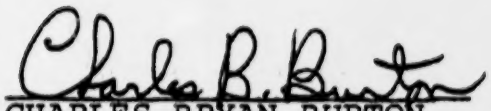
permanently and arbitrarily deprived of his fundamental right to marry by the absolute veto of the guardian or supervising court.

The writ of certiorari should be granted to clarify this important area of the law and resolve the conflict between the decision below and the decisions of this Court.

CONCLUSION

The decision below would render illusory the fundamental right to marry of the mentally disabled in Maine by permitting third parties to have an absolute and arbitrary veto over the exercise of that right. For this reason the petition for certiorari should be granted and the judgment of the Supreme Judicial Court of Maine reversed with instructions to reinstate the judgment of the Superior Court of Hancock County, Maine, in this proceeding.

Respectfully submitted,

By 

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DATED: August 27, 1980.

APPENDIX A

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 2338
Law Docket No. Han-79-11

WILLIAM B. KNIGHT, as
Special Guardian of
William Austin Knight,
and William Austin
Knight, his ward

v.

JEAN T. RADOMSKI, also
known as Jean T. Knight

Argued: January 8, 1980
Decided: May 30, 1980

Before: McKUSICK, C.J., and WERNICK,
GODFREY, and GLASSMAN, JJ.

GODFREY, J.

William B. Knight, father and guardian of William Austin Knight (known as "Buzz"), brought this action, as special guardian, to annul the marriage of Buzz to defendant Jean T. Radomski. The action was brought in Superior Court on behalf of Buzz pursuant to 19 M.R.S.A. §632 (Supp. 1979-80)[1] on essentially three grounds: first, that Buzz Knight had been declared mentally incompetent before the marriage and his duly appointed guardian had had no notice of the marriage and had not consented to it; second, the marriage license had been procured by

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[1] 19 M.R.S.A. §63 provides, in part, as follows:

> When the validity of a marriage is doubted, either party may file a complaint as for divorce, and the court shall order it annulled or affirmed according to the proof . . . .

fraudulent or improper procedure; and third, on the date of the marriage, defendant had not completed a valid divorce from her previous husband.[2] After a trial without jury, the Superior Court denied the requested annulment and dismissed the complaint. Knight, Sr. filed this timely appeal. Radomski filed a cross-appeal, which has since been abandoned. We sustain the plaintiff's appeal and reverse the judgment of the Superior Court.

From the voluminous record on appeal, we conclude that the following facts are undisputed: On October, 1972, Buzz Knight was struck by an automobile

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[2] 19 M.R.S.A. §33 (1964) provides as follows:

> Marriages, contracted while either of the parties has a former wife or husband not divorced, living, are void.

while jogging and suffered severe brain damage with paralysis and change of personality. He was eventually sent to the Veterans Administration Hospital at Togus for treatment. In March, 1973, William B. Knight was appointed conservator of his son's estate pursuant to 18 M.R.S.A. §3701 (1964).[3] In October, 1973, Buzz was divorced from the woman to whom he had been married before the accident.

Early in 1977 the defendant, Dr. Jean Radomski, a psychologist at Togus, began working with Buzz Knight as a patient. Dr. Radomski, who was married at the time, became romantically attracted to Buzz and in March, 1977, asked his parents if they would object to her marrying him. After the senior Knight stated

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[3]This section has since been repealed, effective January 1, 1981. P.L. 1979, ch. 540, §24-C.

his reservations about her proposal, she still continued to work with Buzz as a patient.

On September 12, 1977, William B. Knight filed a petition for guardianship of Buzz. On the basis of considerable medical testimony, the probate judge of Hancock County, acting pursuant to 18 M.R.S.A. ch. 501, subch. III (1964 and Supp. 1979-80), issued a decree on January 17, 1978, imposing a guardianship on Buzz Knight and appointing William B. Knight guardian of his estate and temporary guardian of his person for a period of sixty days. Jean Radomski appeared at the probate court hearing in opposition to the appointment of Knight, Sr., as guardian. On March 21, 1978, the probate court issued an order appointing William B. Knight permanent guardian of the person of Buzz Knight, conditioned on the

filing of a bond.

Defendant stopped treating Buzz as a patient on September 12, 1977, the same day that Mr. Knight filed the petition for guardianship. She had been served on September 2, 1977, with a complaint by her husband, Theodore Radomski, for a Maine divorce. Her husband left Maine in the same month and became a resident of Arizona, where he again filed for divorce. In October, defendant left Maine and became a resident of Colorado.

Sometime in March, 1978, Theodore Radomski went to the Dominican Republic to obtain a quick divorce. Defendant had signed a power of attorney allowing her husband's Dominican attorney to appear for her in her absence. On March 28, the day after he obtained the Dominican divorce, Theodore Radomski delivered the decree to defendant in Boston.

On the same day, March 28, 1978, the probate judge approved the bond filed by William B. Knight pursuant to the guardianship order of March 21. The judge issued a formal letter of appointment of Knight as permanent guardian, and his order was docketed before noon on March 28.

At 1:30 p.m. on the same day, a marriage ceremony took place between Buzz Knight and defendant Radomski at the Togus Hospital. The ceremony was witnessed by two of defendant's ex-patients. Also dated March 28, 1978, is an order of the probate judge of Kennebec County granting a waiver of the five-day waiting period on the ground that Jean Radomski had patients waiting in Colorado. The couple immediately left the hospital and went to Connecticut and then to Colorado the next day. Buzz Knight was later returned to

Togus Hospital, where he remains pending the outcome of this litigation.

At trial, the presiding justice listened to much testimony from witnesses on both sides concerning Buzz Knight's competence, mental and emotional condition, comprehension of the marital relationship, and tractability. Buzz himself did not testify. The justice began the opinion accompanying his order by stating that he drew no inference from the failure of Buzz to testify and that he found the evidence conflicting as to whether Buzz himself desired an annulment. He stated, also, that the expert witnesses were in disagreement about whether Buzz suffered from psychosis. He concluded that the plaintiff gurdian, William B. Knight, had failed to meet his burden of showing that Buzz "lacked sufficient mental capacity at the time of the marriage." He found

that it was "more probable than not that on March 28, 1978, William Austin Knight had sufficient mental capacity to understand the nature of the marriage contract and the duties and responsibilities thereby granted."

The case presents a threshold issue because of the provision of 19 M.R.S.A. §632 (Supp. 1979-80) that "either party" to a marriage may file a complaint for annulment when the validity of a marriage is doubted. In Inhabitants of Winslow v. Inhabitants of Troy, 97 Me. 130, 132, 53 A. 1008, 1009 (1902), this Court stated that a guardian "only" could not bring an annulment action, but the Court declined to say whether a guardian could bring such an action on behalf of his incompetent ward.[4] We hold now that a

[4]The annulment statute in Troy was virtually the same as the present 19 M.R.S.A. §632, supra note 1.

guardi n of an incompetent has standing to bring an annulment action under section 632 on behalf of the ward. Such standing is inherent in the guardian's responsibility for protecting the rights of the ward under 18 M.R.S.A. subch. III (1964 & Supp. 1979-80).[5]

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[5]Title 18, M.R.S.A. has been repealed in its entirety by P.L. 1979, ch. 540, §24-C, effective January 1, 1981, and replaced by P.L. 1979, ch. 540, §1, the Maine Probate Code title 18-A of the Revised Statutes. Under section 8-401(b)(3) of the new Code, a guardian of an incompetent person will continue to hold the appointment after January 1, 1981, but the powers and duties of the appointment will be governed by the new Code.

Guardianship of incapacitated persons will be governed by article V, parts 3 and 4, of the new Code. 18 A M.R.S.A. §5-303 provides the procedure for appointment of a guardian, and §5-312 defines a guardian's general powers and duties. Subsection (a) of section 5-312 provides, in part:

> A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has repecting his unemancipated minor child . . . .

With respect to the merits, Knight, Sr., relies on several provisions of 18 M.R.S.A. ch. 501, subch. III. Section 3601(1) (1964 & Supp. 1979-80) provides that guardians may be appointed for

> all persons, including those mentally ill or of unsound . . . who, by reason of infirmity or mental incapacity, are incompetent to manage their own estate or to protect their rights.

Under subdivision (1) of subsection (a),

> To the extent that it is consistent with the terms of any order by a court of competent jurisdiction . . . he /the guardian/ is entitled to custody of the person of his ward . . . .

Marriage of minor persons is governed by 19 M.R.S.A. §62 (Supp. 1979-80), which provides that a marriage certificate shall not be issued to a minor without the written consent of the parent guardian or person having custody by court order.

Parts 3 and 4 of article 5 of the new Probate Code provide procedures for protecting the property of a person under disability. There is, however, no provision using the language of the present title 18, sections 3603 and 3607.

Section 3603 provides:

> When such application /for appointment of a guardian/ is made and notice issued thereon by the judge, the applicants may cause a copy of their application and the order of the court thereon to be filed in the registry of deeds for the county. If a guardian is appointed thereupon, all contracts, except for necessaries, and all gifts, sales or transfers of real or personal estate made by such person after said filing and before the termination of the guardianship are void. This section does not add anything to the validity of any such act previous to said filing.

Section 3605 provides, in part:

> Such guardians shall have the custody of the persons of their wards, if resident in the State, except so far as the court of probate may from time to time otherwise order . . . .

Section 3607 provides:

> When a person over 18 years of age is under guardianship, he is incapable of disposing of his property otherwise

> than by his last will or of making any contract, notwithstanding the death, resignation or removal of the guardian. When, on application of any such person or otherwise, the judge finds that a guardian is no longer necessary, he shall order the remaining property of the ward to be restored to him, except a legal compensation to the guardian for his services.

In addition to the quoted provisions from title 18, Knight, Sr., relies on 19 M.R.S.A. §32 (1964), which provides: "No mentally ill or feebleminded person or idiot is capable of contracting marriage." Marriages prohibited by section 32, if solemnized in Maine, are declared "absolutely void" by 19 M.R.S.A. §631 (Supp. 1979-80).

The Superior Court rejected Knight's arguments. It held that marriage is not a contract of the sort prohibited by the quoted provisions of

title 18. In so ruling, the court relied on Roether v. Roether, 180 Wis. 24, 191 N.W. 576, 28 A.L.R. 631 (1923), in which the Wisconsin court held, in an action by a wife to affirm her marriage to an alleged incompetent, that marriage is not a "contract" within the meaning of a statute resembling 18 M.R.S.A. §3603. The Superior Court conducted its own inquiry into Buzz Knight's competence to marry at the time of the marriage, holding that the probate court's prior appointment of a permanent guardian of his person, finalized on the day of the marriage, was not controlling because the competence requisite for marriage is different from that required for other matters.

The Superior Court relied on Inhabitants of St. George v. City of Biddeford, 76 Me. 593 (1885), which involved a collateral attack on the validity

of a marriage of an allegedly insane person. However, St. George was not a case where another court had already made an adjudication of incompetence and appointed a guardian of the person of the adjudicated incompetent. In St. George, the judge submitted to a jury the question of the man's competence to marry, instructing the jury that the man need not have understood all the duties, obligations and responsibilities which the marriage relation imposed upon him but "should have had at the time sufficient mental capacity to enable him to understand the nature of the marriage relation, the nature of the marriage contract, and to understand that upon himself he took with it all the duties, obligations and responsibilities which the law would impose upon him as a result of that contract on his part, whatever they were." 76 Me.

at 597. This Court approved the judge's instructions and stated that a person "may have mental competency to make one contract and not another." 76 Me. at 596.[6] Cases in other states are generally in accord. See Annots., "Mental Capacity to Marry," 28 A.L.R. 635, 644 (1924); 82 A.L.R. 2d 1040, 1046 (1962).

As a general rule, a party attacking the validity of a marriage on the ground of mental incapacity bears the burden of proof. E.g., Inhabitants of Winslow v. Inhabitants of Troy, supra; Johnson v. Johnson, N.D., 104 N.W.2d 8 (1960). See Annots., 28 A.L.R. 635, 652 (1924); 82 A.L.R.2d 1040, 1053 (1962). In the present case, the Superior Court found that "it is more probable than not" that Buzz Knight had "sufficient mental

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[6] R.S. 1884, ch. 59, §2 provided that "no insane person or idiot shall be considered capable of contracting marriage."

capacity to understand the nature of his marriage contract," which would imply, in effect, that even if the burden were on the defendant, she had met it. If this case did not involve a guardianship, we would necessarily review the Superior Court's decision under a clearly-erroneous standard. However, we do not reach any question of the sufficiency of the evidence to support the court's finding of fact because we disagree with the court's ruling that 18 M.R.S.A. §§3603 and 3607 do not apply to marriage contracts.

Nothing in the provisions of sections 3603 and 3607, considered in the entire context of subchapter III of 18 M.R.S.A. ch. 501, suggests that exceptions should be made for any particular kind of contract, especially in view of the express exception for "necessaries"

appearing in section 3603 itself. On the contrary, section 3607 states unequivocally that a person under guardianship shall be legally "incapable . . . of making any contract." Against this statutory language, we could uphold the decision of the Superior Court only by holding that marriage is not really a "contract" in any sense that could have been intended by sections 3603 and 3607.

The law of Maine has always regarded marriage as a civil contract. Ninety-five years ago, in Inhabitants of St. George v. City of Biddeford, supra, this court described the marriage contract as follows: "Although marriage be 'a status' or 'a relation' or 'an institution,' it requires the intelligent consent of two persons to make the contract that produces it." 76 Me. at 596. See also Dolan v. Dolan, Me., 259 A.2d 32, 52

A.L.R.3d 577 (1969). Legislation relating to domestic relations, contained in title 19 of the Revised Statutes, is replete with references to the concept of "contracting marriage". In particular, 19 M.R.S.A. §32 (1964) provides that no mentally ill or feebleminded person or idiot is "capable of contracting marriage".

It is true that section 32 does not mention incompetents under guardianship and arguably would not apply to an adjudicated incompetent who did not qualify as "mentally ill" or "feebleminded" or idiotic. But we cannot infer from that omission an intent in 18 M.R.S.A. §§3603 and 3607 to create an exception to the contractual disability of an adjudicated incompetent under guardianship. Instead, it is necessary to conclude that the Maine statutes treat marriage as

arising out of contract and that if it had been the purpose of the legislation to except contracts of marriage from the disability of an adjudicated incompetent under guardianship, it would have made explicit provision to that effect. In the absence of explicit language, we decline to read such an exception into the guardianship statute.

It should be emphasized that William B. Knight had been appointed guardian of the person as well as the property of Buzz Knight. The responsibilities of a guardian of the person include the full spectrum of responsibilities necessary to provide for the care and overall well-being of the ward, subject to the general superintendency of the court. Because the marriage of a ward can have great impact on matters for which the guardian of his person is

responsible under our statutes, it would be inconsistent with the protective purposes of the relevant Maine legislation to permit an incompetent ward to enter effectively a contract of marriage that is not approved by the duly appointed guardian of his person.

In Roether v. Roether, supra, the Wisconsin Supreme Court held that although marriage is a civil contract, "its essence is to define a status in society rather than to regulate control over property," whereas in the guardianship statute, "the legislature was dealing with the latter subject". 180 Wis. at 27, 191 N.W. at 577. The Maine statutory context is different: The role of the guardian of the person of an incompetent person is not limited in Maine to protection of this property, nor is the marriage of an incompetent ward without

effect on his property interests. In Maine, in the absence of effective agreement to the contrary, marriage has obvious effects on a person's property interests. The fact that the controlling statutes manifest, among other purposes, the purpose of protecting the property of an adjudicated incompetent under guardianship actually tends to support the conclusion that the contractual disability in terms set forth in the guardianship statute does include marriage.

In conclusion, the legislation governing this case, 18 M.R.S.A. ch. 501, subch. III, requires us to hold that the marriage of Jean Radomski and Buzz Knight, without the consent of the duly appointed guardian of the person of Buzz, should have been annulled. Under that legislation, the probate court of Hancock County retains continuing jurisdiction over the

guardianship of Buzz Knight. Having already duly adjudicated Buzz to be incompetent and placed him under formal guardianship, that court remained the proper forum for determination of issues relating to his welfare. It is clear from the record in this case that marriage could cause profound changes in the ward's life. Disputes over the extent and desirability of those changes should be resolved by the court superintending the guardianship. That court has authority under 18 M.R.S.A. §3605, in appropriate circumstances, to modify the terms of the guardianship, and its decisions in that regard are reviewable by the Superior Court sitting as the Supreme Court of Probate. 4 M.R.S.A. §401 (1979).[8]

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[8]Repealed, effective January 1, 1981, by P.L. 1979, ch. 540, §7-B.

Defendant's proper procedure, if she could not obtain the guardian's consent, would have been to seek relief from the Hancock County probate court by filing a motion stating grounds for modification of the guardianship order to permit her marriage with Buzz. In no other way can the integrity of the legislative arrangements for guardianship established by 18 M.R.S.A. ch. 501, subch. III, be maintained.

In view of our disposition of the case, it becomes unnecessary to consider the effect of the fact that the probate judge of Kennebec County, who granted a waiver of the statutory waiting period for marriage required by 19 M.R.S.A. §61, had not been informed when he did so that Buzz Knight was under guardianship as an incompetent by order of the Hancock County probate court. It also

become unnecessary for us to pass on the validity of the Radomskis' Dominican divorce. We intimate no opinion on those questions.

The entry is:

Appeal sustained.

Judgment reversed.

Remanded for entry of judgment for plaintiff annulling the marriage.

Cross-appeal dismissed.

All concurring.

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APPENDIX B

STATE OF MAINE
HANCOCK, ss

SUPERIOR COURT
Civil Action,
Docket No. 78-96

WILLIAM B. KNIGHT, in his capacity as Special Guardian Ad Litem of William Austin Knight, and WILLIAM AUSTIN KNIGHT, his ward,

Plaintiffs

vs.

JEAN T. RADOMSKI, also known as JEAN T. KNIGHT,

Defendant

OPINION

The complaint in this action seeks an annulment of the marriage of William Austin Knight to Jean T. Radomski which occurred on March 28, 1978. William B. Knight, father of William Austin Knight, commenced this action on behalf of his son and in his capacity as Special Guardian. By pre-trial order, this Court appointed William B. Knight as guardian ad litem of William Austin Knight.

Perhaps the Court should observe at the outset that the evidence is conflicting as to whether William Austin Knight personally desires that the marriage be annulled. Although either party could have called him as a witness, and the Court indicated a willingness to hear testimony at the Togus V. A. Hospital if necessary, William Austin Knight did not testify in these proceedings. The Court draws no inference of any kind from that fact.

The plaintiff-guardian attacks the validity of the marriage on three broad grounds: (1) failure to comply with statutory requirements concerning the recording of marriage intentions and issuance of a town clerk's certificate, (2) lack of capacity of the defendant by virtue of a pre-existing marriage and (3) lack of capacity of the plaintiff-ward because of pre-existing guardianship proceedings and mental incompetency.

The plaintiff-guardian contends that notice of intentions of marriage should have been filed in Ellsworth as the town of residence, and that application for a waiver of the five-day waiting period should have been made in Hancock County (19 M.R.S.A. §62 et seq). These deficiencies, if indeed they are such, do not invalidate an otherwise valid marriage. Gardiner v. Manchester, 88 Me.

249, 33 A 990 (1896); Damon's Case, 6 Me. 150 (1824); 61 ALR2d 847.

The plaintiff-guardian also contends that the defendant lacked capacity to marry on March 28, 1978, either by virtue of a pre-existing marriage (19 M.R.S.A. Section 33), or by virtue of the suspension of her capacity under foreign law. The defendant suggests that her admission of a prior marriage to Theodore Radomski is insufficient evidence to generate this issue without more formal proof. The Court disagrees and finds that there was a valid pre-existing marriage. The plaintiff suggests that this Court refuse recognition of the divorce obtained on March 27, 1978 by Theodore Radomski in the Dominican Republic. This Court can find no public policy of the State of Maine requiring non-recognition of a foreign divorce between

participating parties, neither of whom are domiciled in Maine. Non-recording, or failure of promulgation, has not been established and this Court will assume the validity of the Dominican decree.

The plaintiff presented evidence that a divorcee (but not a divorcé) must wait ten months before she is permitted to re-marry under the laws of the Dominican Republic. The Court is not persuaded as to the accuracy of that interpretation. However, even if that interpretation is accurate, there may be sound reasons of public policy for refusing to give effect to a restriction so clearly contrary to our own principles of equal protection. Should our courts permit Theodore Radomski to re-marry while denying the same privilege to his former wife? This Court cannot sustain

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the second grounds of attack on the marriage, if otherwise a valid marriage.

In September of 1977, guardianship proceedings were initiated in the Probate Court in Hancock County. On January 17, 1978, the Judge of Probate found William Austin Knight incompetent by reason of mental incapacity and appointed William B. Knight guardian of his estate and temporary guardian of his person. On March 21, 1978, William B. Knight was appointed permanent guardian of the person and Letters of Guardianship were issued on March 28, 1978. An appeal was filed by the defendant herein as well as by the guardian ad litem appointed by the Probate Court.

The plaintiff-guardian argues that by virtue of the applicable statutes (18 M.R.S.A. §3603 and 3607) and the rulings of the Probate Court, the ward

automatically lacks capacity to marry. The weight of authority is otherwise. Griffin v. Beddow, 268 S.W.2d 403 (Kentucky 1954); In re Hanrahan's Will, 194 A. 471 (Vermont 1937); Bradford v. Parker 99 N.E.2d 537 (Mass. 1951); 82 ALR2d 1040; 28 ALR 635; 52 Am. Jud. 2d 881. The Maine cases suggest that the determination of the Probate Court, even if final, do not create so much as a presumption of mental incapacity to marry. (See discussion below).

Finally, this Court must deal with the basic question in this case, to wit: Whether William Austin Knight lacked sufficient mental capacity at the time of his marriage to Jean T. Radomski. Section 32 of Title 19 M.R.S.A. provides that "no mentally ill or feeble-minded person or idiot is capable of contracting marriage . . ." In construing similar

statutes, courts generally have found them to be declaratory of the accepted standard "as to whether there is a capacity to understand the nature of the contract and the duties and responsibilities which it creates." 28 ALR 641; 82 ALR2d 1044.

In addition to his argument that guardianship per se renders the ward incapable of contracting a marriage, the plaintiff suggests that the statutory standards of competency are the same. In his trial brief, the plaintiff states that the statutory standard means "basically that the ward must have the capacity to enter into contracts and transact business in order for him to have the capacity to marry." That position is contrary to the majority view (28 ALR 645 and 82 ALR 1046) and misconstrues the Maine cases cited, to wit: Atkinson v. Medford 46 Me. 510

. . .

(1859); St. George v. Biddeford, 76 Me. 593 (1885).

In the Atkinson case, the trial judge instructed the jury that the same degree of mind sufficient to enable him to enter into a valid contract, or make a valid deed or will, would be sufficient to enable him to contract matrimony. The Law Court held that the instruction was "sufficiently favorable" (emphasis added) for the defendant-appellant who was attacking the validity of the marriage.

In the St. George case, the defendant-appellant, who sought to uphold the validity of the marriage, excepted to the jury instructions as requiring that the party have "common capacity to make contracts generally". The Law Court said the charge was not "amenable to the criticism" of the defendant-appellant and interpreted the charge as saying merely

that "the same rule would apply to this man making this contract of marriage, that would apply to other men making other contracts." Earlier in its opinion, the Court quoted with agreement that "nature makes no leaps, but passes from one complexion /sanity/ to its opposite by graduations so gentle that one shades imperceptible into the other, and no one can fix positively the point of transition". Thereafter, the Court said: "To avoid this difficulty as far as is practically possible, and in accordance with a common sense view of the matter, the law applies different rules or tests under different circumstances. It tries to ascertain whether a person, alleged insane, is such in respect to the particular question which is being investigated. A man may be of unsound mind in one respect, and not in all respects. He may have mental

competency to make one contract and not another." (emphasis added). In other words, the law requires that each person have mental competency, but the standard may vary with the nature of the circumstances and the purpose for which competency is required.

As the Law Court observed in the St. George case, the instant case is "an uncertain case, and not without strong points upon either side".

The Court heard testimony from persons with varying degrees of expertise and with varying opportunities to observe William Austin Knight before and after the marriage. The Court heard from witnesses who were as intensely interested as the father and the defendant wife. The Court heard testimony from witnesses who are involved on a daily basis with William Austin Knight and from witnesses

who have had little or no personal contact.

There can be no doubt that William Austin Knight suffered substantial brain damage as a result of trauma to the head in 1972. He has been a patient at various military and V. A. hospitals more or less continuously since. As a direct result of the brain damage, he has suffered a loss of both mental and physical functions. He has also sustained an adverse behavioral reaction to his injury and subsequent treatment (or lack thereof). Psychiatric experts disagree as to the existence or non-existence of any mental disorder of psychotic proportions.

The Court heard considerable testimony relating to the conduct of William Beedle Knight and of Jean T. Radomski, their good faith or bad faith, and the propriety of various programs of treatment. A quotation from an opinion of the North

Dakota Supreme Court seems apt: "The issue here for determination is not the methods of character, good, bad or indifferent of the defendant wife or of other interested parties, nor whether the marriage in question in the opinion of relatives or others was hasty or ill advised, as common experience indicates that such many times is the wont of the human race, but rather the critical inquiry is whether . . . /William Austin Knight/ . . . at the very date of such marriage, was of unsound mind thereby lacking sufficient mental capacity to contract a valid marriage" . . . . Johnson v. Johnson 104 N.W.2d 8 at 13 (N.D. 1960).

For this marriage to be valid, William Austin Knight must have had at the time sufficient mental capacity to understand the nature of the marriage contract, that by it he became the husband of Jean T. Radomski and assumed all the duties

and responsibilities and all the rights growing out of that relation. This Court agrees with the trial judge in the St. George case that he need not have understood all the duties, obligations and responsibilities; but that he have sufficient capacity to understand that he was undertaking all of the responsibilities which the law would impose as a result of his marriage, whatever they were.

This Court also agrees with the comment of the trial judge in the Griffin case, after reciting the general rule: "But it has also been observed that marriage depends to a great extent on sentiment, attachment and affection which person with equal, as well as those with stronger intellects feel and that it does not depend, to the extent that ordinary contracts do, on the exercise of clear reason, discernment and sound judgment." Griffin v. Beddow, supra at 405.

This Court must approach with great reluctance the prospect of judicially terminating a marriage entered into voluntarily, without fraud, and with the apparent consent of both parties. The plaintiff-guardian bears the burden of satisfying this Court by clear and convincing evidence that William Austin Knight lacked sufficient mental capacity at the time of the marriage. This he has failed to do. On the contrary, the Court is satisfied that it is more probably than not that on March 28, 1978, William Austin Knight had sufficient mental capacity to understand the nature of his marriage contract and the duties and responsibilities thereby created.

Accordingly, counsel for the defendant are directed to prepare an appropriate order for the entry of final judgment herein in favor of the defendant and against the plaintiff

Date: June 19, 1979

/s/ David G. Roberts
David G. Roberts,
Justice, Superior Court